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**French Redwood, Inc. d/b/a Sofitel San Francisco Bay
and Cemetery Workers & Greens Attendants,
Local 265, SEIU, AFL-CIO. Case 20-RC-17923**

November 24, 2004

**DECISION AND DIRECTION OF SECOND
ELECTION**

BY MEMBERS SCHAUMBER, WALSH, AND MEISBURG

The National Labor Relations Board, by a three-member panel, has considered objections to an election held February 18, 2004,¹ and the hearing officer's report recommending disposition of them (pertinent portions attached as Appendix A). The election was conducted pursuant to a Decision and Direction of Election issued on January 23. The tally of ballots shows 27 for and 24 against the Petitioner, with no challenged ballots.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the hearing officer's findings and recommendations only to the extent consistent with this Decision and Direction, and finds that the election must be set aside and a new election held.

We find that the hearing officer erred in overruling the Employer's Objection 2, which alleged that the Union misled voters to believe that the government favored the Union in the election. We sustain Objection 2 and set aside the election. Therefore, we find it unnecessary to pass on the hearing officer's recommendations to overrule the Employer's remaining objections.

I. FACTS

During the week before the election, several employees received a 1-page copy of a sample Board ballot by mail, in an envelope bearing the Union's return address. (As an example, Employer exhibit 1a, which is representative of each of the mailings, is attached as Appendix B.)² As the hearing officer described, the document appears to be a photocopy of the middle page of a Board election notice with a sample ballot located at the bottom of the document. Consistent with the items contained in the Board's standard notice, located at the top of the document is the unit description; at about the middle of the document, the date, time, and place of the election are listed; and, at the bottom half of the document is the sample ballot. The document is written in Spanish, the

primary language of a majority of the bargaining unit. The word "MUESTRA" ("SAMPLE") is typed in large letters across the sample ballot. The document also contains items that are not part of the Board's standard notice, including a large "X" handwritten through the "yes" box on the sample ballot. At the bottom of the document, the phrase "POR FAVOR- SI SE PUEDE" is handwritten in capital letters. According to the Board's interpreter at the hearing, this phrase translates to, "Please- Yes it can be done," or "Please- It can be yes if you can," as emphasized by a square drawn around the word "Si" ("Yes"). In addition, each recipient's first name was handwritten in the area to the left of the time and place of the election on the document that they received.

The hearing officer recommended overruling this objection, applying the Board's standard in *SDC Investment, Inc.*, 274 NLRB 556 (1985), discussed *infra*.³ The hearing officer found that although the source of the document cannot be ascertained on its face, the document did not create the impression that the Board favored the Union in the election. Relying on the employee's name, "X" in the "yes" box, and the Spanish phrase handwritten on each document, as well as the Union's return address on the envelope, the hearing officer concluded that the sample ballots were "sufficiently distinct from the Board's preprinted standard ballots so as to preclude a reasonable impression that the markings emanated from the Board." The Employer excepts, arguing that the hearing officer erred in finding that the handwritten markings on the document would lead a voter to believe it was from the Union. The Employer asserts that employees could still believe that the Board prepared the document even if they also could conclude, based on the envelope's return address, that the Union distributed the document.

II. ANALYSIS

An altered ballot is not objectionable if its source is clearly identified on its face. *SDC Investment, Inc.*, 274 NLRB 556, 557 (1985). If the source is not clearly identified, the Board examines the nature and contents of the document to determine on a case-by-case basis whether the document has the tendency to mislead employees into believing that the Board favors one of the parties to the election. *Id.* The Board considers extrinsic evidence, such as the circumstances of the document's distribution, in analyzing this factor. *3-Day Blinds, Inc.*, 299 NLRB 110, 111 (1990) (citing *Baptist Home for Senior Citizens*,

¹ All dates are in 2004 unless otherwise specified.

² At the hearing, the Union's organizer denied that the Union was the source of the document. However, no evidence was introduced that would suggest anyone else was responsible for sending it.

³ Although the hearing officer applied the *SDC Investment* standard, she noted the Board's reliance on *Brookville Healthcare Center*, 312 NLRB 594 (1993), discussed *infra*, in similar cases for additional support.

290 NLRB 1059, 1060 fn. 4 (1988), and cases cited therein). However, the fact that a party distributed the document, without more, does not establish that the party prepared the document. *Id.* at 112. Parties can avoid uncertainty by either refraining from using altered ballots as campaign materials or by clearly identifying the source of the materials. *SDC Investment*, *supra*, 274 NLRB at 557.

The Board has found altered sample ballots similar to the document in this case to be objectionable. As here, the sample ballots found to be objectionable in prior cases included a complete or nearly complete copy of the Board's official ballot marked with an "X" in one box and an added message on the document, with no clearly partisan slogans or cartoons. For example, the document in *SDC Investment*, *supra*, was a copy of Board's official sample ballot printed in English, on the opposite side of a hand-printed Spanish translation and the message, "Remember to vote yes on December 16th." The document in *Archer Services*, 298 NLRB 312 (1990), was a copy of the Board's official sample ballot with the printed heading, "To Vote Against The Union" at the top, on the opposite side of a list of "voting facts" addressing voting procedures. Finally, the document at issue in *3-Day Blinds*, *supra*, was a copy of the Board's official sample ballot with the message, "THIS IS HOW TO MARK YOUR BALLOT TO GIVE THE NEW OWNERS A CHANCE" printed at the bottom.

We agree with the hearing officer that the *SDC Investment* standard should be applied to the sample ballot at issue in this case. We also agree that the document on its face does not clearly identify its source. However, contrary to the hearing officer, we find, based on an examination of the nature and contents of the document, that it had the tendency to mislead employees into believing that the Board favored the Union in the election. As in the cases discussed above, the document in this case included a complete copy of the Board's official sample ballot, as well as the same details about the election that are included on the Board's official notice, and a hand-printed message indicating support of a party to the election. However, the document contained no clearly partisan slogans or cartoons, and the handwritten markings were even less clearly attributable to a party to the election than those involved in the cases discussed above. Nor does the Union's return address on the envelope containing the sample ballot establish that the Board did not prepare it, because distribution by a party, without more, does not establish the source of the document. *3-Day Blinds*, *supra*, 299 NLRB at 112. Therefore, we find that the distribution of the altered sample ballot con-

stituted objectionable conduct sufficient to affect the results of the election.

Moreover, we find that the Board's decision in *Brookville Healthcare Center*, 312 NLRB 594 (1993), does not require a different result. The Board's revised notice of election includes language disavowing the Board's role in any defacement and specifying the Board's neutrality in the election process. Therefore, the Board held in *Brookville Healthcare* that the *SDC Investment* analysis is no longer required "in all cases involving defacement of a revised notice" because the new language precludes a reasonable impression that the Board endorses any choice in the election. *Id.* at 594. Due to the "prominence of the bold, large-print 'warning'" on the notice that has been defaced, the Board found that an employee would be as likely to see this warning as another marking on the same document. *Id.*

This case does not involve defacement of the Board's official notice, as in *Brookville Healthcare*. Rather, the defaced document is a copy of part of the Board's notice, pertinently a defaced sample ballot, and the document does not include a copy of the revised disclaimer language to which the Board referred in *Brookville Healthcare*. In *VIP Health Care Services v. NLRB*, 82 F.3d 1122, 1130 (D.C. Cir. 1996), the D.C. Circuit reasoned that the holding in *Brookville Healthcare*, involving a defaced notice of election, was not directly on point because *VIP Health Care* involved an altered sample ballot mailed to voters. The court emphasized that the Board in *Brookville Healthcare* only abandoned the *SDC Investment* analysis in cases that involve "the defacement of a revised notice," because the revised disclaimer language is sufficient to preclude a reasonable belief that the Board endorses a party to the election. *Id.* (emphasis in original). However, the court stated that the Board reasonably relied on *Brookville Healthcare* to bolster its determination that the sample ballot, which was separate from the notice, satisfied the *SDC Investment* analysis. *Id.* The court emphasized that the Board's revised notice language disavows involvement in "ANY MARKINGS THAT YOU MAY SEE ON ANY SAMPLE BALLOT." *Id.* (emphasis in original).

The Board majority's language in *Dakota Premium Foods*, 335 NLRB 228 (2001) (Chairman Hurtgen, dissenting), could be interpreted to suggest that this disclaimer on the Board's revised notice is also dispositive in finding unobjectionable a separate distribution of sample ballots, similar to those in this case and in *VIP Health Care* ("[W]e agree with the hearing officer that the language on the Board's revised notices would have effectively disclaimed any participation by the Board in the preparation of the sample ballot, and would have suf-

ficiently reassured employees of the Board's neutrality in the election." *Id.* at fn. 2). However, in the same footnote, the Board affirmed the hearing officer's application of the *SDC Investment* analysis. There would have been no need to apply this analysis if the disclaimer contained in the Board's revised notice per se served to validate all sample ballots. For this reason, we find that the D.C. Circuit's analysis in *VIP Health Care* reflects the correct interpretation of Board law with respect to the weight given to the disclaimer contained in the Board's revised notice, in a case where, as here, the defaced sample ballot is separate from the sample ballot contained in the notice.⁴

III. CONCLUSION

For the foregoing reasons, we sustain the Employer's Objection 2 and find that the Union, through the distribution of an altered sample election ballot, misled voters into believing that the Board favored the Union in the election. Accordingly, we set aside the election and direct a second election.

DIRECTION OF SECOND ELECTION

A second election by secret ballot shall be held among the employees in the unit found appropriate, whenever the Regional Director deems appropriate. The Regional Director shall direct and supervise the election, subject to the Board's Rules and Regulations. Eligible to vote are those employed during the payroll period ending immediately before the date of the notice of second election, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the date of the first election and who retained their employee status during the eligibility period and their replacements. *Jeld-Wen of Everett, Inc.*, 285 NLRB 118 (1987). Those in the military services may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the payroll period, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the election date and who have been

permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining by Cemetery Workers & Greens Attendants, Local 265, SEIU, AFL-CIO.

To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of the notice of second election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Dated, Washington, D.C. November 24, 2004

Peter C. Schaumber, Member

Ronald Meisburg, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER WALSH, dissenting.

My colleagues find that the employees preparing to vote in this election could reasonably believe that the National Labor Relations Board sided with the Union in the election, and, even more, that the NLRB was specifically, expressly, and individually beseeching them to vote for the Union. My colleagues arrive at this finding because someone, we don't know who, using the Union's return address, mailed to at least nine employees photocopies of the Board's sample ballot, on which someone had handwritten (1) each recipient's name in underlined salutation on the recipient's copy (e.g., "*OFELIA*;" "*GUSTAVO*;" "*MARIA*;" "*PATRICIA*"), (2) an oversized "X" through the "yes" block, and (3) the exhortation "*POR FAVOR—[X] SE PUEDE*" at the bottom.⁵ (A copy of

⁴ Our dissenting colleague apparently agrees with us in this regard, to the extent that he finds the *SDC Investment* analysis is the appropriate analysis in this context, and the *Brookville Healthcare* rationale provides additional support, which is consistent with the D.C. Circuit's reasoning in *VIP Health Care*, *supra*.

In an appropriate case, we would consider the type of bright-line rule advocated by former Chairman Hurtgen, which would require a clear disclaimer on the face of any altered sample ballot. *Dakota Premium Foods*, *supra*, 335 NLRB at 228–229 (Chairman Hurtgen, dissenting).

⁵ The phrase translates to "PLEASE- YES IT CAN BE DONE" or "PLEASE—IT CAN BE YES IF YOU CAN." The notices of election were also printed in Spanish because that was the primary language of a majority of the unit employees.

one of these mailings is attached here as Appendix B). The Union denies preparing or mailing the documents, and there is no evidence that it did.

I agree with the hearing officer's thorough analysis of the facts and her application of precedent, as set forth in Appendix A to this decision, and I would adopt her correct recommendation to overrule the Employer's objection stemming from what is obviously campaign propaganda.⁶ My colleagues, however, while applying the framework for analysis in *SDC Investment*, 274 NLRB 556 (1985), nevertheless find that the employees could reasonably believe from the propaganda that the Board favored the Union. Unlike my colleagues, I find under *SDC Investment* that it would not be reasonable for the employees to believe upon receipt of the mailing, with its handwritten personal first-name salutation and strident closing appeal across the bottom of the page, and the oversized handwritten "X," that the theretofore totally silent National Labor Relations Board was, out of the blue and with only a few days left before the election, suddenly and enthusiastically jumping into the contest and imploring the employees individually and personally to please vote for the Union. In arriving at their result, my colleagues are reaching far beyond not just my grasp, but Board precedent.

In *Taylor Cadillac*, 310 NLRB 639 (1993), aptly cited by the hearing officer, the Board found that the large, bold markings on the sample ballot were sufficiently distinct from the Board's standard preprinted sample ballots so as to preclude a reasonable impression that the markings emanated from the Board.⁷ Along with the hearing officer, I come to the same result here, on the same grounds.⁸

I also agree with the hearing officer's reliance on the principles of *Brookville Health Care Center*, 312 NLRB 594 (1993), in addition to the framework for analysis in *SDC Investment*, as additional grounds for overruling this objection. In *Brookville*, the Board said that it would no longer require the *SDC Investment* analysis to be applied in cases involving defacement of the sample ballot in the notice of election, because the Board had recently revised its notices of election to include language specifically disavowing Board participation or involvement in any defacement, as well as specifically asserting its neutrality

in the election process.⁹ The Board found that this disclaimer language was sufficient in itself to preclude a reasonable impression that the Board favors or endorses any choice in the election.

As the hearing officer noted, application of *Brookville* has been extended to cases where, like this one, the defaced or altered sample ballot is posted or distributed separately from the notice of election, and thus separately from the Board's printed disclaimer. In *Comcast Cablevision of New Haven*, 325 NLRB 833 (1998), the Board adopted the hearing officer's application of both the *SDC Investment* and *Brookville* frameworks for analysis in finding that the union's conduct in distributing mock ballots did not warrant setting aside the election.¹⁰ In adopting the hearing officer's analysis and findings in *Comcast*, the Board not only found that the mock ballots were clearly union propaganda which would not reasonably mislead employees into believing that the Board favored the Union (i.e., an *SDC Investment* analysis), but it also found "in addition," that the posted official notice of election containing the printed disclaimer language under discussion here provided further support for concluding that the employees would not reasonably believe that the mock ballot emanated from the Board, citing *Brookville*. 325 NLRB at 833 fn. 2.

More recently, in *Dakota Premium Foods*, 335 NLRB 228 (2001), which, like *Comcast* and the instant case, involved copies of an altered sample official ballot that were distributed to employees separately from the notice of election, and thus separately from the Board's printed disclaimer, the Board not only found that the hearing officer appropriately applied the *SDC Investment* analysis in determining that the union's distribution of marked sample ballots was not objectionable because employees receiving these documents could easily conclude that

⁹ The standard printed notice language in question states, in large, bold lettering:

Warning: This Is The Only Official Notice Of This Election And Must Not Be Defaced By Anyone. Any Markings That You May See On Any Sample Ballot Or Anywhere On This Notice Have Been Made By Someone Other Than The National Labor Relations Board, And Have Not Been Put There By The National Labor Relations Board. The National Labor Relations Board Is An Agency Of The United States Government, And Does Not Endorse Any Choice In The Election.

The Board's official notice of election containing this language was also posted in Spanish.

¹⁰ In finding that "it does not appear that marking a ballot in a partisan way constitutes objectionable conduct given the warnings now attached to Board Notices of Election," the hearing officer in *Comcast* expressly relied on, inter alia, both *Baptist Home for Senior Citizens*, 290 NLRB 1059 (1988), in which the Board expressly applied the *SDC Investment* analysis, and *Brookville*, although citing it under the name *Irrington Nursing Care Services*, 312 NLRB 594 (1993).

⁶ I also agree with the hearing officer's recommendations to overrule the Employer's other objections, on which my colleagues are not passing, and to issue a certification of representative.

⁷ Accord, *Rosewood Mfg. Co.*, 278 NLRB 722 (1986), cited in *Taylor Cadillac*.

⁸ Just as the hearing officer, I also rely on the fact that the Union's return address, not the Board's return address, appeared on the envelope in which the mailings were sent in finding that the employees would not reasonably believe that the mailings came from the Board.

they came from the union, but it also found “in addition” that the language on the Board’s revised notices of election would have effectively disclaimed any participation by the Board in the preparation of the sample ballot, and would have sufficiently reassured employees of the Board’s neutrality in the election. 335 NLRB at 228 fn. 2.¹¹

The cases relied upon by my colleagues in finding that the employees’ receipt of the campaign propaganda in question warrants setting aside the election are readily distinguishable. Unlike here, the document found to be objectionable in *SDC Investment* contained an *unaltered* complete copy of the Board’s official sample ballot in English on one side and a complete handwritten facsimile of the sample ballot in Spanish on the reverse, structured in the same format as the Board’s sample ballot, with the official seal of the National Labor Relations Board forged at the top of the Spanish language side and the entreaty “Remember to vote yes on December 16th” added at the bottom, in the same style as the rest of the Spanish language side. The entreaty thus appeared to be an integral part of the text, rather than an addition to it. Based on all of this, the Board concluded:

Although the Spanish language side of the leaflet was hand-printed, the presence of the Board seal at the top and the official Board sample ballot on the reverse side did much to make the document appear to be official. Moreover, employees might well have assumed that the Board’s printed sample ballots were available only in English, so the fact that the Spanish version of the sample ballot was handwritten would not necessarily exclude the possibility that it was prepared informally by the Board for this election. Therefore, we conclude that, by its nature and contents, the leaflet was likely to be perceived by voters as an official Board document and was likely to lead Spanish-speaking voters into believing that the Board wanted them to vote “yes” in the election. [274 NLRB at 558; footnotes omitted.]

The facts in the instant case, as set forth in detail *supra*, are clearly distinguishable from those in *SDC Investment*.

The two-sided document found to be objectionable in *Archer Services, Inc.*, 298 NLRB 312 (1990), also relied upon by my colleagues, displayed on one side the boxed,

printed heading “Important Facts to Know About Voting,” and listed instructions to employees regarding voting procedures and the time and place of the election. At the bottom of the page the words “See Sample Ballot” were followed by a series of arrows indicating the reverse side of the document. At the top of the reverse side, the printed heading “To Vote Against The Union” was centered above a reproduced sample ballot with a bold, handwritten “X” in the “no” box. The ballot contained information and instructions in English with Spanish translations.

In finding that the document in *Archer* had a tendency to mislead employees into believing that the material came from the Board, or that the Board favored the employer, the Board found first that the document was not clearly partisan, and that nothing suggested that the document was campaign propaganda from the employer. Moreover, the Board found that the message above the altered ballot, “To Vote Against the Union,” sounded even more “neutral” than the “Remember to vote yes on December 16” message in *SDC Investment*, and was therefore more likely to be interpreted as coming from the Board. And, as in *SDC Investment*, there were no otherwise clearly partisan additions to the document. For these reasons, the Board found that the material did not present itself as propaganda and the employees were therefore not capable of evaluating it as such.

The document at issue in *3-Day Blinds, Inc.*, 299 NLRB 110 (1990), also relied upon by my colleagues, was a copy of the Board’s official sample ballot, with a handwritten “X” in the “no” box, and the message “THIS IS HOW TO MARK YOUR BALLOT TO GIVE THE NEW OWNERS A CHANCE” printed at the bottom. In finding the document objectionable, the Board found, *inter alia*, that the message printed at the bottom of the handbill was not readily discernable as a non-Board statement. The Board found the message to be no less neutral than the “Remember to vote yes on December 16” message in *SDC Investment*. The Board also noted that the message was not handwritten, but printed in English and Spanish in a format not dissimilar to that on the ballot or on Board notices of election. Additionally, the Board found that there were no clearly partisan additions such as cartoons, slogans, headings, or salutations that would make it unreasonable for employees to believe that the document came from the Board, citing *Archer Services*, *supra*. For these reasons, the Board found that the material did not present itself as propaganda, and that the employees would not be capable of evaluating it as such.

Unlike in *Archer* and *3-Day Blinds*, the additions to the sample ballot in question here were handwritten, personal, by-name salutations, and exhortations that

¹¹ Thus, I agree with the hearing officer’s finding in footnote 6 of her attached report that even in cases in which the Board’s notice disclaimer language is not included on the defaced or altered sample ballots, the *Brookville* rationale provides additional support for rejecting objections based on such ballots. I further agree with the hearing officer’s citation to, *inter alia*, the court’s opinion in *VIP Health Care Services v. NLRB*, 82 F.3d 1122 (D.C. Cir. 1996) as support for her finding.

“Please—yes, it can be done,” or “Please—it can be yes if you can.” Both the clearly partisan content of the message and the informal, handwritten style in which it was delivered render it self-evidently prounion propaganda, and not even arguably an instructional message delivered by a neutral government agency, such as found in *Archer* and *3-Day Blinds*, *supra*.

I would adopt the hearing officer’s report and issue a certification of representative.

Dated, Washington, D.C. November 24, 2004

Dennis P. Walsh,

Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX A

Objection No. 2:

At the hearing, four employees testified that during the week before the election, they received in the mail a one-page document containing a sample Board ballot.⁴ Copies of the 1-page document received by the employees were entered into evidence as Employer Exhibits 1a through 1d. One of the employees kept the envelope in which the document arrived and that envelope bears the Union's return address. The document appears to be a photocopy of the middle page of a Board election notice with a sample ballot located at the bottom of the document. Located at the top of the document is the unit description; at about the middle of the document, the date, time, and place of the election are listed; and, at the bottom half of the document is the sample ballot with a large "X" handwritten through the "yes" box. The document is written in Spanish, the primary language of a majority of the bargaining unit. The word "MUESTRA" ("SAMPLE") is typed in large letters across the sample ballot. At the bottom of the document, the phrase "Por Favor—[Si] Se Puede" is handwritten in capital letters. Translated, the phrase means, "Please—Yes It Can Be Done" or "Please—Yes If You Can." In addition, each recipient's first name was handwritten in pen in the area to the left of the time and place of the election on the document that they received. The Employer contends that the Union misled voters to believe that the government favored the Union in the election. The Union denies preparing or mailing the document to employees.

In *SDC Investment*, 274 NLRB 556 (1985), the Board announced the standard for evaluating altered Board documents. The Board held:

The initial inquiry is whether the source of the defacement is clearly identified on the face of the material. If so, then the Board will find that the document is not misleading, because employees would know it emanated from a party and would not be led to view it as a Board endorsement of that party. If the identity is not evident, then the Board will examine the nature and contents of the material to determine whether the document has a tendency to mislead employees into believing that the Board favors a particular party.

Subsequently, in *Brookville Healthcare Center*, 312 NLRB 594 (1993), the Board announced that it would no longer apply *SDC Investments* in cases involving a defaced notice because the Board had added new language to its standard election notice disavowing Board participation or involvement in any defacement and specifically asserting its neutrality in the election process.⁵ The Board found that the new notice language was

⁴ I received an offer of proof from the Employer that it was prepared to call as many as five additional employees to testify that they received the same document in the mail during the week prior to the election.

⁵ This language states:

WARNING: THIS IS THE ONLY OFFICIAL NOTICE OF THIS ELECTION AND MUST NOT BE DEFACED BY ANYONE. ANY MARKINGS THAT YOU MAY SEE ON ANY SAMPLE BALLOT OR ANYWHERE ON THIS NOTICE HAVE BEEN MADE BY

sufficient to preclude the impression that the Board favored or endorsed any party.

I find that *SDC Investments* is the correct standard to apply because the document mailed to the employees in this case did not include the revised notice language discussed in *Brookville Healthcare*. See *Dakota Premium Foods*, 335 NLRB 228 (2001); *Systrand Mfg. Corp.*, 328 NLRB 803 (1999).⁶ Thus, the first inquiry is whether the source of the document mailed to employees in this case is ascertainable from the face of the document. Here, the party responsible for defacing the sample ballot on the reproduced notice is not identified on the face of the document. Accordingly, the inquiry is whether the altered document was likely to give voters the misleading impression that the Board favored one of the parties to the election. I find that the document mailed to employees in this case did not create the impression that the Board favored the Union in the election. In making this finding, I rely on the fact that the handwritten "x" in the "yes" box of the ballot and the handwritten exhortation at the bottom of the document to "vote yes," written in Spanish, is clearly a pro-Union appeal that is "sufficiently distinct from the Board's preprinted standard ballots so as to preclude a reasonable impression that the markings emanated from the Board." *Taylor Cadillac*, 310 NLRB 639 (1993). In addition, the first name of the employee recipient was handwritten on each document—another contraindication that it was a document issued by the Board. Finally, I note that the only envelope in evidence, in which one of these documents was received, bore the Union's return address.⁷ In these circumstances, I find that the document received by employees in this case would not tend to mislead voters into believing that the board was encouraging them to vote in favor of the Union.

Accordingly, I recommend that the Employer's Objection No. 2 be overruled.

SOMEONE OTHER THAN THE NATIONAL LABOR RELATIONS BOARD AND HAVE NOT BEEN PUT THERE BY THE NATIONAL LABOR RELATIONS BOARD. THE NATIONAL LABOR RELATIONS BOARD IS AN AGENCY OF THE UNITED STATES GOVERNMENT AND DOES NOT ENDORSE ANY CHOICE IN THE ELECTION.

⁶ Even in cases in which the revised notice language is not included on the defaced document, the Board has relied on the rationale of *Brookville Healthcare* as additional support for rejecting objections based on defaced or mock ballots. See *Kwik Care*, 82 F.3d 1122 (1996), in which the D.C. Circuit found that it "was not unreasonable for the Board to rely on *Brookville* to support the assumption that the employees voting in the election would have read the election notice—including the statement that "ANY MARKINGS THAT YOU MAY SEE ON ANY SAMPLE BALLOT . . . HAVE BEEN MADE BY SOMEONE OTHER THAN THE [BOARD]" (emphasis added)—and would therefore have known that the altered ballot constituted the Union's partisan propaganda." 82 F.3d at 1130. See also *Comcast Cablevision of New Haven*, 325 NLRB 833 fn. 2 (1998); *Wells Aluminum Corp.*, 319 NLRB 798 (1995); *Hotel & Restaurant Employees Local 226 (Santa Fe Hotel)*, 318 NLRB 829, 839 (1995). I take administrative notice of the fact that the official Board notice of election posted at the Employer's facility in this case contained the revised notice language and that such notice was posted in Spanish.

⁷ These facts are distinguishable from those in *Archer Services*, 298 NLRB 312 (1990) and *3-Day Blinds, Inc.*, 299 NLRB 110 (1990), which are pre-*Brookville Healthcare* cases.

20-RC-17923
LA UNIDAD DE VOTAC

ELEGIBLE PARA VOTAR:

Todos los empleados de jornada completa y de jornada parcial regular que son de housekeeping, se incluye a los encargados de los cuartos, los encargados del "Turn-Down", los "Housepersons" del piso, los "Housepersons" del lobby, los encargados de lavandería, los supervisores de los que trabajan en el piso de housekeeping y los supervisores de los que trabajan en la oficina de housekeeping, que estaban empleados por el Empleador en su hotel localizado en Redwood City, California, durante el periodo de pago que se termino con el 23 de enero de 2004.

LOS QUE NO SON ELEGIBLE PARA VOTAR:

Todos los demás empleados, los empleados de confidencial, los guardias y supervisores como esta definido en el Ley de la Junta Nacional de Relaciones Laborales.

LA FECHA, HORA Y LUGAR DE LA ELECCIÓN

FECHA: MIÉRCOLES, el 18 de febrero, 2004

HORA: 2:30 p.m. hasta las 5:30 p.m.

LUGAR: Establecimiento del Empleador
223 Twin Dolphin Drive
Redwood City, California

MARIA

UNITED STATES OF AMERICA
ESTADOS UNIDOS DE AMERICA
National Labor Relations Board
Junta Nacional De Relaciones Del Trabajo
OFFICIAL SECRET BALLOT
PAPELETA SECRETA OFICIAL
For Certain Employees of
Para Ciertos Empleados De
FRENCH REDWOOD, INC. d/b/a
SOFITEL, SAN FRANCISCO BAY

Do you wish to be represented for purposes of collective bargaining by—
¿Desee usted estar representado para los fines de negociar colectivamente por

CIMETERY WORKERS & GREENS ATTENDANTS LOCAL 265,
SEIU, AFL-CIO

MARK AN "X" IN THE SQUARE OF YOUR CHOICE
MARQUESE CON UNA "X" DENTRO DEL CUADRO DE SU SELECCION

YES SI <input checked="checked" type="checkbox"/>	NO NO <input type="checkbox"/>
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DO NOT SIGN THIS BALLOT. Fold and drop in ballot box.
NO FIRME ESTA PAPELETA. Dóblela y déchela en la urna.

POR FAVOR — SI SE PUEDE

